

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

- 1 Page 105, between lines 3 and 4, begin a new paragraph and insert:
- 2 "SECTION 45. IC 6-3.1-30.5 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
- 4 [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]:
- 5 **Chapter 30.5. School Scholarship Tax Credit**
- 6 **Sec. 1. As used in this chapter, "credit" refers to a credit**
- 7 **granted under this chapter.**
- 8 **Sec. 2. As used in this chapter, "school scholarship program"**
- 9 **refers to a grant program that is certified as a school scholarship**
- 10 **program by the department of education under IC 20-50.**
- 11 **Sec. 3. As used in this chapter, "pass through entity" means:**
- 12 **(1) a corporation that is exempt from the adjusted gross**
- 13 **income tax under IC 6-3-2-2.8(2);**
- 14 **(2) a partnership;**
- 15 **(3) a limited liability company; or**
- 16 **(4) a limited liability partnership.**
- 17 **Sec. 4. As used in this chapter, "scholarship granting**
- 18 **organization" refers to an organization that:**
- 19 **(1) is exempt from federal income taxation under Section**
- 20 **501(c)(3) of the Internal Revenue Code; and**
- 21 **(2) conducts a school scholarship program.**
- 22 **Sec. 5. As used in this chapter, "state tax liability" means a**
- 23 **taxpayer's total tax liability that is incurred under:**
- 24 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**
- 25 **(2) IC 6-5.5 (the financial institutions tax); and**
- 26 **(3) IC 27-1-18-2 (the insurance premiums tax);**
- 27 **as computed after the application of the credits that under**
- 28 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
- 29 **chapter.**
- 30 **Sec. 6. As used in this chapter, "taxpayer" means an individual**
- 31 **or entity that has any state tax liability.**

1 **Sec. 7.** A taxpayer that makes a charitable contribution to a
 2 scholarship granting organization for use by the scholarship
 3 granting organization in a school scholarship program is entitled
 4 to a credit against the taxpayer's tax liability in the taxable year in
 5 which the taxpayer makes the charitable contribution.

6 **Sec. 8.** The amount of a taxpayer's credit is equal to fifty percent
 7 (50%) of the amount of the charitable contribution made to the
 8 scholarship granting organization for a school scholarship
 9 program.

10 **Sec. 9. (a)** If the amount of a credit for a taxpayer in a taxable
 11 year exceeds the taxpayer's state tax liability for that taxable year,
 12 the taxpayer may carry the excess over to subsequent taxable
 13 years. The amount of the credit carryover from a taxable year shall
 14 be reduced to the extent that the carryover is used by the taxpayer
 15 to obtain a credit under this chapter for any subsequent taxable
 16 year.

17 **(b)** A taxpayer is not entitled to a carryback or refund of an
 18 unused credit.

19 **Sec. 10. (a)** If:

20 (1) a pass through entity does not have state tax liability
 21 against which the credit may be applied; and

22 (2) the pass through entity would be eligible for a credit if the
 23 pass through entity were a taxpayer;

24 a shareholder, partner, or member of the pass through entity is
 25 entitled to a credit under this chapter.

26 **(b)** The amount of the credit to which a shareholder, partner, or
 27 member of a pass through entity is entitled is equal to:

28 (1) the credit determined for the pass through entity for the
 29 taxable year; multiplied by

30 (2) the percentage of the pass through entity's distributive
 31 income to which the shareholder, partner, or member is
 32 entitled.

33 **Sec. 11.** To apply a credit against the taxpayer's state tax
 34 liability, a taxpayer must claim the credit on the taxpayer's annual
 35 state tax return or returns in the manner prescribed by the
 36 department. The taxpayer shall submit to the department the
 37 information that the department determines is necessary for the
 38 department to determine whether the taxpayer is eligible for the
 39 credit.

40 **Sec. 12.** A charitable contribution shall be treated as having
 41 been given for a school scholarship program if the charitable
 42 contribution is given to a scholarship granting organization that
 43 conducts a school scholarship program and either the:

44 (1) taxpayer designates in a writing delivered to the
 45 scholarship granting organization not later than the date the
 46 charitable contribution is made that the charitable
 47 contribution is to be used only for a school scholarship
 48 program; or

(2) scholarship granting organization provides the taxpayer with written confirmation that the charitable contribution will be dedicated for use in a school scholarship program.

Sec. 13. The total amount of tax credits awarded under this chapter may not exceed seven million five hundred thousand dollars (\$7,500,000) in any state fiscal year.

Sec. 14. The department shall provide on the Internet web site used by the department the following information:

(1) The application for the credit provided in this chapter.

(2) A timeline for receiving the credit provided in this chapter.

(2) The total amount of credits awarded under this chapter during the current calendar year.

SECTION 13. IC 20-50 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 50. EDUCATIONAL SCHOLARSHIPS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agreement" refers to an agreement between the department and an applicant that applies for certification of a school scholarship program.

Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for a school scholarship program.

Sec. 4. "Educational scholarship" refers to a grant to pay the tuition and fees that would otherwise be charged to:

(1) an eligible student; or

(2) a parent of an eligible student.

Sec. 5. "Eligible student" refers to an individual who:

(1) has legal settlement in Indiana;

(2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7; and

(3) either:

(A) qualifies for the federal free or reduced price lunch program; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year.

Sec. 6. "Federal free or reduced price lunch program" refers to the national free or reduced price lunch program established under 42 U.S.C. 1751 et seq.

Sec. 7. "School scholarship" refers to an educational scholarship awarded by a scholarship granting organization.

Sec. 8. "Participating school" refers to a nonpublic school that:

(1) is accredited under IC 20-31-4-2; and

(2) voluntarily agrees to enroll an eligible student.

The term does not include a public school.

1 **Sec. 9. "Scholarship granting organization" refers to an**
 2 **organization that:**

- 3 (1) is exempt from federal income taxation under Section
 4 501(c)(3) of the Internal Revenue Code; and
 5 (2) is organized at least in part to grant educational
 6 scholarships.

7 **Sec. 10. "Tuition and fees" means tuition, fees, and other costs**
 8 **that:**

- 9 (1) an eligible student; or
 10 (2) a parent of an eligible student;

11 **is required to pay to enroll the eligible student in an elementary**
 12 **school program or high school program of a participating school.**
 13 **The term includes any payment for textbooks, transportation, and**
 14 **uniforms if the payments are typical for all other students**
 15 **attending the participating school.**

16 **Chapter 2. Exchange of Information; Rules**

17 **Sec. 1. The department shall maintain a publically available list**
 18 **of the school scholarship programs that are certified by the**
 19 **department. The list must contain names, addresses, and any other**
 20 **information that the department determines is necessary for the**
 21 **public to determine which scholarship granting organizations**
 22 **conduct school scholarship programs. A current list must be posted**
 23 **on any Internet web site used by the department to provide**
 24 **information to the public about educational matters.**

25 **Sec. 2. The department may adopt rules under IC 4-22-2 and**
 26 **prescribe forms as necessary to implement this article.**

27 **Chapter 3. Educational Scholarship Organizations;**
 28 **Certification; Administration of Contributions**

29 **Sec. 1. As used in this chapter, "scholarship" refers to a school**
 30 **scholarship.**

31 **Sec. 2. A scholarship granting organization may apply to the**
 32 **department for certification of an educational scholarship program**
 33 **as a school scholarship program.**

34 **Sec. 3. An educational scholarship program qualifies for**
 35 **certification as a school scholarship program if the applicant for**
 36 **certification:**

- 37 (1) is a scholarship granting organization;
 38 (2) applies to the department on the form and in the manner
 39 prescribed by the department;
 40 (3) enters into an agreement with the department to comply
 41 with this article and the rules adopted by the department to
 42 implement this article; and
 43 (4) demonstrates the applicant's financial viability to the
 44 department, if the applicant will receive at least fifty thousand
 45 dollars (\$50,000) in contributions in a school year, by filing
 46 with the department before the beginning of the school year:
 47 (A) a surety bond payable to the state in an amount equal
 48 to the total amount of contributions expected to be

received during the school year; or

(B) financial information that demonstrates the financial viability of the scholarship granting organization.

Sec. 4. The department shall certify all qualifying applicants for certification as scholarship granting organizations.

Sec. 5. An agreement must require a scholarship granting organization to do the following:

(1) Provide a department approved receipt to taxpayers for contributions made to the scholarship granting organization that will be used in a scholarship program. The department shall prescribe a standardized form for a receipt to be issued by a scholarship granting organization to a taxpayer that indicates the value of a contribution and the amount of the contribution that is being designated for use in a scholarship program.

(2) Distribute at least ninety percent (90%) of the total amount of contributions as scholarships to eligible students.

(3) Distribute one hundred percent (100%) of any income earned on contributions as scholarships to eligible students.

(4) Distribute part of the scholarships in each school year to eligible students who qualify for the federal free or reduced price lunch program in the county where the scholarship granting organization expends the majority of its scholarships.

(5) Distribute part of the scholarships in each school year to first time recipients who were enrolled in the school corporation where the eligible students had legal settlement for at least part of the immediately preceding school year.

(6) Ensure that scholarships are portable during the school year and can be used at any participating school that accepts the eligible student according to a parent's wishes. If an eligible student moves to a new participating school during a school year, the scholarship must permit the scholarship amount to be prorated between the participating schools.

(7) Distribute periodic scholarship payments as checks made payable to an eligible student's parent and mailed to the participating school where the eligible student is enrolled. An eligible student's parent must endorse the check before it can be deposited.

(8) Conduct criminal background checks on all the scholarship granting organization's employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds.

(9) Maintain with the department proof of the scholarship granting organization's continuing financial viability in the form required in section 3(4) of this chapter for each school year in which the scholarship granting organization will

1 receive at least fifty thousand dollars (\$50,000) in
2 contributions.

3 (10) Make the reports required by this chapter.

4 Sec. 6. An agreement must prohibit a scholarship granting
5 organization from distributing scholarships for use by an eligible
6 student to:

7 (1) enroll in a school that has:

8 (A) paid staff or board members; or

9 (B) relatives of paid staff or board members;

10 in common with the scholarship granting support
11 organization;

12 (2) enroll in a school that the scholarship granting
13 organization knows does not qualify as a participating school;
14 or

15 (3) pay tuition and fees for a public school where the eligible
16 student is entitled to enroll without the payment of tuition or
17 transfer tuition under IC 20-26-11.

18 Sec. 7. (a) A scholarship granting organization must publicly
19 report to the department by August 1 of each year the following
20 information regarding the organization's scholarships in the
21 previous school year:

22 (1) The name and address of the scholarship granting
23 organization.

24 (2) The total number and total dollar amount of contributions
25 received during the previous school year.

26 (3) The:

27 (A) total number and total dollar amount of scholarships
28 awarded during the previous school year;

29 (B) total number and total dollar amount of scholarships
30 awarded during the previous year to students qualifying
31 for the federal free and reduced price lunch program; and

32 (C) percentage of first time recipients of scholarships who
33 were enrolled in the school corporation where the recipient
34 has legal settlement for at least part of the immediately
35 preceding school year.

36 (b) The report must be certified under penalties of perjury by
37 the chief executive officer of the scholarship granting organization.

38 Sec. 8. (a) A scholarship granting organization must, not more
39 than sixty (60) days after the end of the scholarship granting
40 organization's fiscal year, submit a financial information report for
41 the scholarship granting organization that:

42 (1) covers the immediately preceding fiscal year; and

43 (2) is prepared in conformity with the uniform financial
44 accounting standards established by the department.

45 (b) The chief executive officer of the scholarship granting
46 organization must certify under penalties of perjury that the
47 financial report is free of material misstatements, as determined
48 under the uniform financial accounting standards established by

1 the department.

2 **Sec. 9.** The department shall prescribe a standardized form for
3 scholarship granting organizations to report information required
4 under this chapter.

5 **Sec. 10.** The department may, in a proceeding under IC 4-21.5,
6 suspend or terminate the certification of an organization as a
7 scholarship granting organization if the department establishes
8 that the scholarship granting organization has intentionally and
9 substantially failed to comply with the requirements of this article
10 or an agreement entered into under this article.

11 **Sec. 11.** If the department suspends or terminates the
12 certification of an organization as a scholarship granting
13 organization, the department shall notify affected scholarship
14 students and their parents of the decision as quickly as possible.

15 **Sec. 12.** The department may conduct either a financial review
16 or an audit of a scholarship granting organization if the
17 department has evidence of fraud.

18 Page 132, between lines 8 and 9, begin a new paragraph and insert:
19 "SECTION 117. [EFFECTIVE JANUARY 1, 2007
20 (RETROACTIVE)] (a) IC 6-3.1-30.5, as added by this act, applies to
21 contributions made in taxable years beginning after December 31,
22 2006.

23 (b) The division of family resources, after consultation with the
24 department of education, may adopt temporary rules in the
25 manner provided for the adoption of emergency rules to implement
26 IC 20-50, as added by this act. A temporary rule adopted under
27 this SECTION expires on the earliest of the following:

28 (1) The date another temporary rule is adopted under this
29 SECTION that supersedes or repeals the previously adopted
30 temporary rule.

1 **(2) The date that a permanent rule adopted under IC 4-22-2**
2 **supersedes or repeals a temporary rule adopted under this**
3 **SECTION.**

4 **(3) The date specified in the temporary rule.**

5 **(4) June 30, 2009."**

6 Renumber all SECTIONS consecutively.

(Reference is to EHB 1001 as printed April 6, 2007.)

Senator STEELE